



**CONTAINS CONFIDENTIAL BUSINESS INFORMATION NOT SUBJECT TO DISCLOSURE UNDER FOIA**

March 7, 2022

**By Electronic Mail**

Mary E. Greene  
Director  
Air Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Mail Code: 2201A  
Washington, DC 20460

Re: March 2022 Update to Response to April 24, 2020 Letter from the U.S. Environmental Protection Agency

Dear Ms. Greene:

Birla Carbon USA, Inc. (“Birla” or the “Company”) submits this letter as the twenty second update to its May 22, 2020 response to the April 24, 2020 letter it received from the U.S. Environmental Protection Agency (“EPA” or the “Agency”) regarding force majeure notices the Company submitted on March 16 and 18, 2020 in anticipated noncompliance with obligations under the Consent Decree between the United States of America, the Louisiana Department of Environmental Quality (“LDEQ”), the Kansas Department of Health and Environment (“KDHE”), and Columbian Chemicals Company. Consent Decree, *United States et al. v. Columbian Chem. Co.*, No. 6:17-cv-01661-RGJ-CBW (W.D. La. June 11, 2018).

Please note that this letter and certain attachments to this letter include confidential business information (“CBI”) and are marked as such. Documents marked for CBI are entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B, and are not subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. We ask that LDEQ and KDHE similarly treat this as CBI under their analogous state laws.<sup>1</sup>

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<sup>1</sup> Certain attachments to this letter include CBI, which Birla has designated as such with the stamp “CONFIDENTIAL BUSINESS INFORMATION NOT SUBJECT TO DISCLOSURE UNDER FOIA.” Based on a review of relevant LDEQ

**Birla Carbon USA, Inc.**

1800 West Oak Commons Court, Marietta, Georgia 30062-2253  
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## **I. North Bend**

Since our last update, construction is ongoing at North Bend for installation of equipment required under the Consent Decree. Additionally, Birla's application to modify North Bend's Title V operating permit to include consent decree applicable requirements remains under review with LDEQ. Currently, due to the delays associated with COVID-19, Birla's vendor for the seawater scrubber system and SCR units continues to estimate a two-to-four month delay for various components of the scrubber system. *See Confidential Attachment 1.* The reactor vent scrubber system components have been received and delivered onsite. However, due to delays associated with the global integrated circuit chip shortage and global supply chain issues, the estimated reactor vent scrubber system completion date has been projected to be sometime in October through December 2022. *See Confidential Attachment 1.*

With improvement in the COVID-19 situation the area of the facility, Birla does not anticipate additional issues at this time with manning the project at full capacity. The construction teams have completed the necessary full plant outage and made the initial tie-ins for the new control systems and equipment as noted in our last update. Currently, the Engineer of Record has estimated that the continuous operations date will be March 28, 2022. *See Confidential Attachment 1.* This delay was caused by Birla's vendor for the SICK SO<sub>3</sub> analyzer in failing to provide a commissioning representative until early March 2022. *See Confidential Attachment 1.*

Additionally, during the commissioning process for the required CEMS equipment, the transformer for the CEMS unit failed and had to be replaced. The transformer has now been replaced and installed. The CEMS commissioning efforts have resumed. *See Confidential Attachment 2.*

The current estimated reactor vent scrubber system completion date is projected to be sometime in October through December 2022. *See Confidential Attachment 1.* As discussed in our recent updates, the global integrated circuit chip shortage continues to affect shipment by Birla's vendor of the specialized new ignitors and control equipment associated with the SCRs and reactor vent scrubber system. *See Confidential Attachment 1.* The global chip shortage and supply chain issues continue to affect shipment of ignitors and control equipment as well as the digital control system hardware. Birla and the Engineer of Record are working to improve the schedule wherever possible, and are working with vendors to mitigate the potential impact of any delays in shipment. *See Confidential Attachment 1.* Birla continues to note that the projected completion date remains fluid.

## **II. Hickok**

Hickok<sup>2</sup> is in continuous operations under the Consent Decree and is meeting its Consent Decree obligations as of June 12, 2021.

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regulations, La. Admin. Code tit. 33, pt. I, § 501(A), Birla understands that it must submit any CBI via mail or delivery to LDEQ and not electronically. At this time, Birla is providing the entire submittal to EPA and KDHE, and will separately submit the letter and its attachments to LDEQ.

<sup>2</sup> Kansas State I.D. No. 0670007.

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We will update you with more details as they become available. Please contact David Buente at 202-255-8684 or [dbuente@sidley.com](mailto:dbuente@sidley.com) if you have any questions in the meantime.

Sincerely,



Randy Waskul  
Global Director, Health, Safety & Environmental

CC: Kellie Ortega, U.S. EPA (by email)  
Patrick Foley, U.S. EPA (by email)  
Chris Williams, U.S. EPA (by email)  
Carlos Evans, U.S. EPA Region 6 (by email)  
Emad Shahin, U.S. EPA Region 6 (by email)  
Bill Peterson, U.S. EPA Region 7 (by email)  
Tracey Casburn, U.S. EPA Region 7 (by email)  
Alex Chen, U.S. EPA Region 7 (by email)  
Thomas Mariani, U.S. DOJ (by email)  
Eli Quinn, U.S. DOJ (by email)  
Connie Ellis, KDHE (by email)  
Kate Gleeson, KDHE (by email)  
Deidre Johnson, LDEQ (by FedEx)  
David Buente, Sidley Austin LLP (by email)  
Allen Braddock, Sidley Austin LLP (by email)

Enclosures: Confidential Attachment 1 - 2022 - 03 - 03 - North Bend - Letter from Engineer of Record

Confidential Attachment 2 - 2022 - 03 - 03 - North Bend - Email Correspondence from Engineer of Record (and referenced monthly vendor report)

# **CONFIDENTIAL ATTACHMENT 1**

2022-03-03 - North Bend -  
Letter from Engineer of Record

Attn: Mark B. Vannice, PE, Project Director  
Birla Carbon USA, Inc.  
Regional Office Marietta  
1800 West Oak Commons Ct  
Marietta, GA 30062

Letter: BC-023

Re: Purchase Order No. 2300002188; Notice of Force Majeure Event Update – Status as of March 3<sup>rd</sup>, 2022

Dear Mr. Vannice:

Reference is made the above Purchase Order and the Professional Services Terms and Conditions (Agreement) and Letters BC-001 dated May 13<sup>th</sup>, 2020, and BC-002 dated June 17<sup>th</sup>, 2020. Terms not otherwise defined herein shall have the meaning assigned to them in the Agreement.

In accordance with Article 12(a) of the Agreement Engineer is providing Owner an update to the Force Majeure Event notice of May 13<sup>th</sup>, 2020. The Force Majeure Event is primarily the domino effect of uncontrolled delays and disruption of the global supply chain the Owner is experiencing from its Vendors supplying material and equipment to the Facility project; and secondarily the potential delay caused by disruptions in the available services to, and mobility of, Engineers' staff. The delays and disruptions to the supply chain as we are informed by notices from the Vendors to you are caused by impacts of the COVID-19 epidemic on the manufacture of materials and equipment. These delays are outside the control and without the fault of Engineer. To the extent these delays experienced by the Vendors affects the timely delivery of our Work that depends on inputs of information and ultimately delivery to the Facility in accordance with the Schedule, we are, or likely will be, seeking extensions on the Schedule for a time reasonably necessary to overcome the effect of the delay and additional compensation as appropriate. We are to the extent possible undertaking reasonable measures to make up for time lost caused by the delay and assisting Owner, to the extent possible, mitigating Vendor impacts.

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Mr. Mark Vannice  
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As of November 3<sup>rd</sup>, we are informed by Owner's Vendor [REDACTED] that they are incurring delays of anywhere from two (2) to four (4) months for various components of the AQCS due to the lack of access to manufacturing facilities in connection with the restrictions related to the COVID-19 virus. Additionally, the absorber manufacturer contracted by [REDACTED], [REDACTED], has issued [REDACTED] a Force Majeure claim as of March 2<sup>nd</sup>, claiming a two week delay due to the extreme cold weather event in February and Covid impacts. Delays in delivery of [REDACTED] equipment have directly affected the project schedule. Currently we are still awaiting the VFDs for the combustion blower motors, which is directly impacting progress.

In addition, Owner's Vendor [REDACTED] delayed their hydrotest dates until January 18<sup>th</sup> and 29<sup>th</sup>, 2021, causing a delay of the delivery of the HRSG until March 3<sup>rd</sup>, 2021. This was over two months past the original delivery date.

A new priming system skid has been sourced after the original vendor backed out of their contract due to the death of the company Principal and Covid 19 impacts. The new vendor, [REDACTED], delivered the skid in August of 2021, an approximate slip of more than four months over the original delivery date of April 1<sup>st</sup>.

Additionally, the entire North Bend plant was evacuated the week of August 24<sup>th</sup>, 2020, due to two named storms, Hurricane Laura and Tropical Storm Marco.

Also, the entire North Bend facility was evacuated again October 8<sup>th</sup> – 11<sup>th</sup>, 2020 for Hurricane Delta. This evacuation had initially delayed the piling contractor [REDACTED] and they had issued a Force Majeure notice for this event. The piling is now complete, and this has been incorporated into the current schedule.

Another extreme weather event that impacted the project was the record cold in February 2021. The site was closed Feb 15<sup>th</sup> – 17<sup>th</sup> due to local roads being closed restricting access to the site. Additionally, we did close the site a few days in April due to lightning, but contractors worked Saturdays to mitigate.

On August 27<sup>th</sup>, 2021, the site began preparing for Hurricane Ida. The site was evacuated August 28<sup>th</sup> through the 30<sup>th</sup>. The trade contractors were not able to restaff the job fully immediately due to large portions of their staff having been directly impacted by the hurricane and that were not able to return immediately after the storm. Additionally, the reduced availability and higher prices for fuel and accommodations in the area affected the availability of craft labor.

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These potential delays by the Vendors and the weather-related evacuations and closures of the site translates to a corresponding delay affecting the Engineer's Schedule that is also outside the control and without fault of Engineer. Engineer is taking every effort to overcome or mitigate the potential delays and will keep you informed as further information becomes available, so that we can work together cooperatively to address any problems that may arise on your Facility project.

The AQCS project schedule was significantly impacted by Hurricane Ida. Ida had a significant effect on the availability of manpower. The impact from Ida has delayed the project by at least 4 weeks. The execution of the outages was rearranged to mitigate the lost time due to Ida.

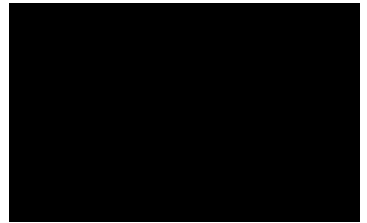
The outage is now complete, and the continuous operation date is trending towards March 28<sup>th</sup>. The most current delay is the inability of [REDACTED] to provide a commissioning representative for the Sick SO3 analyzers until the beginning of March due to a lack of manpower. This equipment has now been commissioned and final commissioning has commenced.

Also, the continuing prevalence of the Omicron Covid variant is a concern for temporary loss of personnel due to quarantine and any effect of this on the date is unknown currently.

The vent scrubber project is experiencing delays due to late equipment deliveries. The delivery of the scrubbers provided by [REDACTED] was impacted the Covid 19 pandemic in India. The scrubbers have been received and are on site. The current estimated Vent Scrubber completion date is now October – December of 2022. Birla and [REDACTED] are working to improve the schedule wherever possible. There are supply chain issues with the new ignitors and associated control equipment and valving as well as the DCS hardware. Both are of concern due to the global IC chip shortage. We are working with both vendors to ascertain and improve the availability.

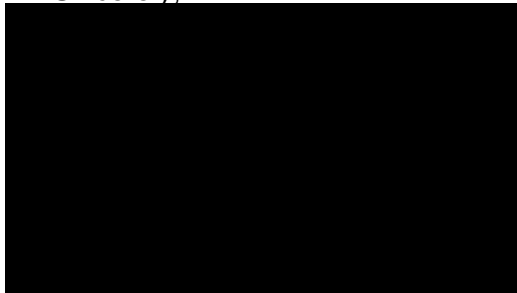
We continue to monitor the situation and will keep the Owner apprised of additional delays or improvements as they are discovered.

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Please feel free to contact me at [REDACTED] or [REDACTED] if you have any questions.

Sincerely,



**cc:** Randy Waskul, Birla  
[REDACTED]  
[REDACTED]



## **CONFIDENTIAL ATTACHMENT 2**

2022-03-03 - North Bend - Email Correspondence  
from Engineer of Record (and referenced monthly vendor  
report)

From: [REDACTED]  
Sent: Thursday, March 3, 2022 2:03 PM  
To: Waskul, Randy <[Randy.Waskul@adityabirla.com](mailto:Randy.Waskul@adityabirla.com)>  
Cc: Vannice, Mark <[Mark.Vannice@adityabirla.com](mailto:Mark.Vannice@adityabirla.com)>; [REDACTED];  
[REDACTED]; [REDACTED]  
Subject: RE: FM update

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Randy-

We have been asking [REDACTED] for better definition of their delays. They need to justify them better for commercial considerations. What we have received is n their monthly report (attached) which indicates delivery of their long lead items to themselves in June.

With regards to [REDACTED], we have proposal from them quoting a 32 week delivery ARO. They have told us verbally that the delivery is driven by supply chain issues with their hardware. They do not have a PO as of yet as Birla Eng/Birla plant/[REDACTED] are still working to define the actual IO required for the system.

The CEMS transformer has been received and is installed. It is no longer holding up commissioning

Thanks,

[REDACTED]

Tel.: [REDACTED]  
Cell.: [REDACTED]

[REDACTED]		MONTHLY PROGRESS REPORT		BY	REV	DATE	DOCUMENT NUMBER
<small>           PROPRIETARY INFORMATION NOTICE            THIS DOCUMENT CONTAINS PROPRIETARY            INFORMATION OF [REDACTED]            AND IS SUBMITTED IN CONFIDENCE            SOLELY FOR THE PURPOSE OF USE BY            THE SELLER/PURCHASER IN CONSIDERING            THE MERITS OF THE DOCUMENT.            NO OTHER USE, DIRECT OR INDIRECT, OF            THE DOCUMENT OR INFORMATION DERIVED            THEREFROM IS AUTHORIZED.         </small>	PROJECT:	[REDACTED]	Birla Carbon - North Bend Vent Scrubber	[REDACTED]	0	2/22/2022	[REDACTED]
	CLIENT:	[REDACTED]	Birla Carbon				SHEETS: 2
	END USER:	[REDACTED]	Birla Carbon				REPORTING PERIOD:
	SALES ORDER NUMBER:	[REDACTED]					February
	JOB SITE LOCATION:	[REDACTED]	Centerville, Louisiana				
	PURCHASE ORDER:	[REDACTED]					
PROJECT MANAGER:		[REDACTED]					
1.0	<b>AREAS OF CONCERN:</b> <ul style="list-style-type: none"> <li>Contractual Delivery Date listed on BC PO and in Exhibit F as well as delays in providing necessary design information.</li> <li>Delivery of long lead items - some order acknowledgements being returned with June delivery dates</li> <li>Comments returned on Electrical Package</li> <li></li> <li></li> </ul>						
2.0	<b>MAIN ACTIVITIES PERFORMED LAST MONTH:</b> <ul style="list-style-type: none"> <li>Long lead items approved and ordered</li> <li>Electrical Design Package issued for review</li> <li>Mechanical Design discussed and worked on up until missing information needed.</li> <li></li> <li></li> </ul>						
3.0	<b>MAIN ACTIVITIES PLANNED FOR NEXT MONTH:</b> <ul style="list-style-type: none"> <li>Mechanical package will be issued this month and expected to be returned with approval next month.</li> <li>Electrical package will be resubmitted next month if all comments can be resolved accordingly.</li> <li></li> <li></li> <li></li> </ul>						
4.0	<b>ENGINEERING:</b> <ul style="list-style-type: none"> <li>Pilot information has been received and mechanical design is nearing completion</li> <li></li> <li></li> <li></li> <li></li> </ul> <p>Percentage Complete: 75%</p>						
5.0	<b>DOCUMENTATION:</b> <ul style="list-style-type: none"> <li>Mechanical design should be ready for issue by Feb. 25th</li> <li>Comments on the electrical package have been received and are being reviewed. Further discussions will be needed on these comments.</li> <li></li> <li></li> <li></li> </ul> <p>Percentage Complete: 60%</p>						
6.0	<b>MATERIAL PROCUREMENT:</b> <ul style="list-style-type: none"> <li>Long lead items have been ordered.</li> <li></li> <li></li> <li></li> <li></li> </ul> <p>Percentage Complete: 50%</p>						

		MONTHLY PROGRESS REPORT		BY	REV	DATE	DOCUMENT NUMBER
<small>PROPRIETARY INFORMATION NOTICE THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION OF [REDACTED] AND IS SUBMITTED IN CONFIDENCE SOLELY FOR THE PURPOSE OF USE BY THE SELLER/PURCHASER IN CONSIDERING THE MERITS OF THE DOCUMENT. NO OTHER USE, DIRECT OR INDIRECT, OF</small>		PROJECT:	[REDACTED] Birla Carbon - North Bend Vent Scrubber	[REDACTED]	0	2/22/2022	[REDACTED]
		CLIENT:	Birla Carbon				SHEETS: 2
		END USER:	Birla Carbon				REPORTING PERIOD:
		SALES ORDER NUMBER:	[REDACTED]				February
		JOB SITE LOCATION:	Centerville, Louisiana				
		PURCHASE ORDER:	[REDACTED]				
7.0	<b>FABRICATION:</b> <ul style="list-style-type: none"> <li>No fabrication release at this time</li> <li></li> <li></li> <li></li> <li></li> </ul> Percentage Complete: 0%						
8.0	<b>ASSEMBLY:</b> <ul style="list-style-type: none"> <li>No fabrication release at this time</li> <li></li> <li></li> <li></li> <li></li> </ul> Percentage Complete: 0%						
9.0	<b>QUALITY, INSPECTION AND TESTING:</b> <ul style="list-style-type: none"> <li>No fabrication release at this time</li> <li></li> <li></li> <li></li> <li></li> </ul> Percentage Complete: 0%						
10.0	<b>DELIVERY:</b> <ul style="list-style-type: none"> <li>No fabrication release at this time</li> <li></li> <li></li> <li></li> <li></li> </ul>						
11.0	<b>COMMERCIAL:</b> <ul style="list-style-type: none"> <li>Delivery date</li> <li>2nd Payment milestone invoiced and due Feb 23rd.</li> <li></li> </ul>						